TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, ~~1904~~ 1905.

No. ~~852~~ 86.

THE ROYAL PACKING COMPANY, APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

FILED AUGUST 22, 1904.

(19,452.)

(19,452.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1904.

No. 352.

THE ROYAL PACKING COMPANY, APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

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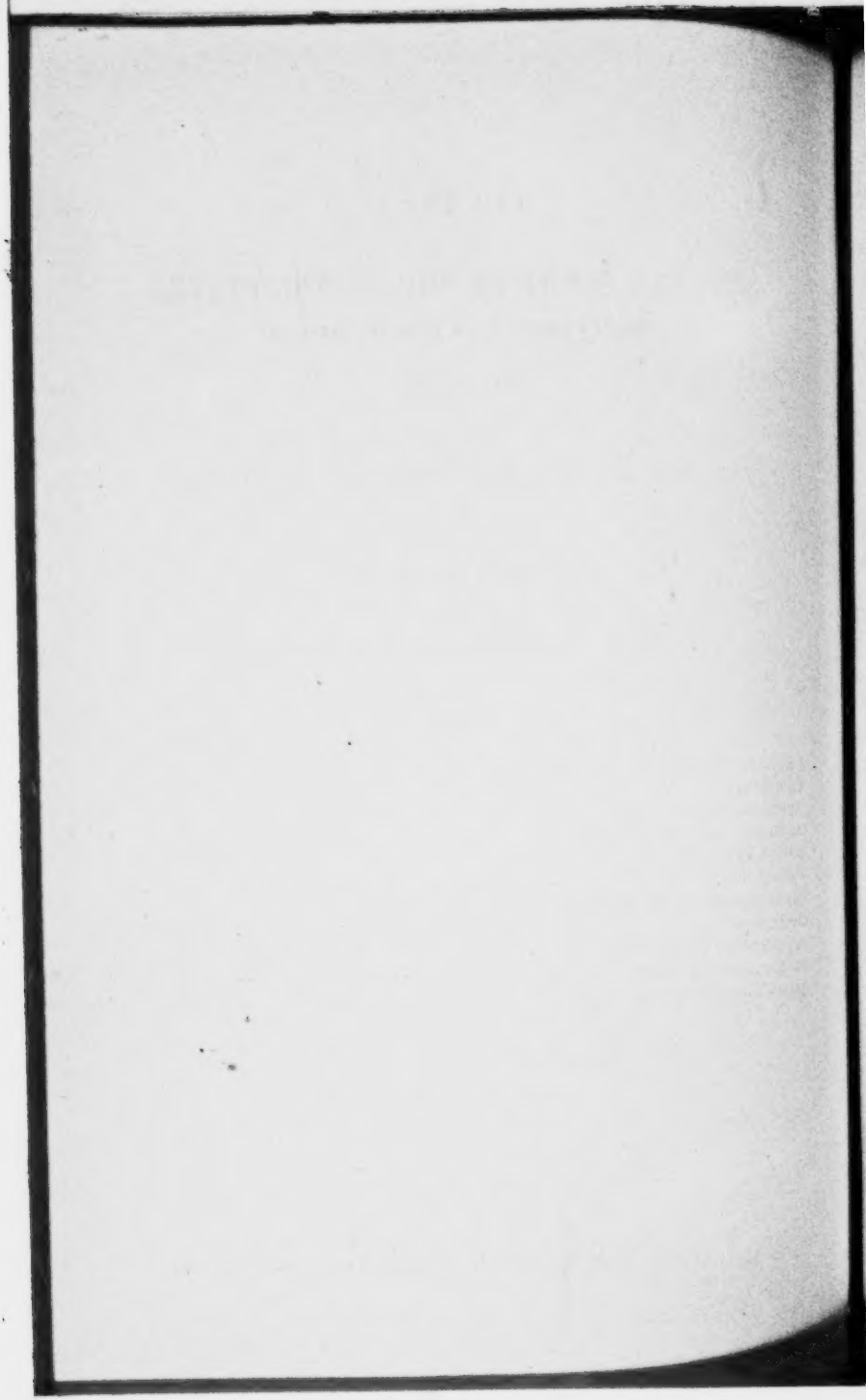

1 Court of Claims.

THE ROYAL PACKING COMPANY (a Corporation)
vs.
THE UNITED STATES. } No. 20759.

I.—*Petition. Filed April* 14, 1897.

To the honorable the judges of the Court of Claims:

The petition of the Royal Packing Company respectfully represents—

1. That the Royal Packing Company, the claimant herein, is a corporation duly incorporated under and by virtue of the laws of the State of California, and that as such corporation your petitioner was privileged to acquire and hold lands and operate various franchises in the State of California and in the Territories of Washington and Alaska in the United States.

2. That after the incorporation of this company, to wit, March, 1889, your petitioner entered upon a certain tract of land in Alaska, the same being on Afognak island, on the north shore of Afognak bay, containing a certain number of acres, to wit, one hundred and thirty-two and ninety-four one hundredths (132.94) acres and began immediately to make improvements thereon.

3. That at the date of the passage of the act of Congress entitled "An act to repeal the timber culture laws and for other purposes, approved March 3, 1891 (26 Stat. at Large 1100), which provided among other things that—

"Any citizen of the United States twenty-one years of age, now or hereafter in possession of and occupying public lands in
2 Alaska, for the purpose of trade or manufactures, may purchase not exceeding one hundred and sixty acres, to be taken as nearly as practicable in a square form, of such land, at two dollars and fifty cents per acre; *Provided*, That in case more than one person, association or corporation shall claim the same tract of land, the person, association or corporation having the prior claim by reason of the possession and continued occupation shall be entitled to purchase the same; but the entry of no person, association or corporation shall include improvements made by or in possession of another prior to the passage of this act,"

your petitioner was still, and had been continuously from the month of March, in the year 1889, in possession of and occupying said tract of land for the purpose of trade and manufactures, and has made improvements thereon of the value of twenty-four thousand ($24,000) dollars; that on the ninth day of November, in the year 1891, pursuant to and in accordance with the provisions of said act and the regula-

tions adopted by the Secretary of the Interior, your petitioner made application, under oath, to the United States marshal, and *ex officio* surveyor-general of Alaska, for estimates of the sums required deposited for field and office work in the making of a survey of said tract; that in response to said application your petitioner was notified by the officer aforesaid that the sum of one hundred and thirty-five ($135) dollars would be required for that purpose; that thereupon petitioner deposited said sum in the United States depository in San Francisco in accordance with section 2401 of the Revised Statutes, for which sum certificates were duly issued; that said certificates were thereafter received by said marshal and *ex officio* surveyor-general, who caused a correct survey of said tract to be made in accordance with the regulations adopted by the Secretary of the Interior, the field notes, maps and plats of this survey, which was known as survey number twenty-three (23) were duly returned
3 to the proper office, approved by said marshal and *ex officio* surveyor-general, and certified copies of the same forwarded to the General Land Office; that thereupon your petitioner made application for the purpose of purchasing said land under said statute.

4. That between the third of March, in the year 1891, and the twenty-fourth of December, in the year 1892, your petitioner made, upon said tract, improvements of the value of two thousand two hundred and fifty ($2,250) dollars in addition to those hereinbefore mentioned.

5. That on the third of March, in the year 1891, and up to and until the twenty-fourth of December, in the year 1892, the tract of land aforesaid had not been selected by the United States commissioner of fish and fisheries for the purpose of establishing fish culture stations.

6. That on the twenty-fourth of December, in the year 1892, the President of the United States, by virtue of said act of the third of March, in the year 1891, and other laws of the United States, issued a proclamation which declared, among other things, that the whole island of Afognak including the property of your petitioner, was reserved for public purposes.

7. That, by the same proclamation, warning was expressly given to all persons, including your petitioner—

"Not to enter upon or occupy the tracts of land or waters reserved by this proclamation, or to fish in or to use any of the waters herein described or mentioned; that all persons or corporations now occupying said island or any of said premises, except under said treaty, to wit, the treaty of the cession of the Russian possessions in North America to the United States concluded March 30th, 1867, shall depart therefrom."

8. That at the date of said proclamation and reservation your petitioner was and had been continuously, from the time before mentioned, to wit, since the month of March in the year 1889, in
4 the actual and exclusive use, occupation and possession of said tract of land and improvements, and that your petitioner

did not occupy the same under and by virtue of the treaty mentioned in said proclamation, and accordingly, in obedience to the mandate of the Government, as expressed in the above mentioned proclamation, departed therefrom.

9. That on or about the fifteenth of January, in the year 1895, the Commissioner of the General Land Office rejected and disapproved the aforesaid survey and application of your petitioner because and on account of the reservations made as aforesaid.

10. That the act of the seventh of May, in the year 1884, was in the nature of a contract by the United States with your petitioner, that it should not be disturbed in its possession, and should be allowed to acquire title to said tract of land; that, relying upon said contract, your petitioner made improvements and built up and had upon said tract, on the third of March, in the year 1891, and the twenty-fourth of December, in the year 1892, an extensive and increasing trade and business; that on the dates aforesaid the trade and business of your petitioner was reasonably worth the sum of ninety thousand ($90,000) dollars; that by reason of the breach of said contract by the United States the trade and business aforesaid was entirely lost and ruined to your petitioner, whereby your petitioner suffered damage to the full extent of the value of said business.

11. That your petitioner has never been paid for any of said improvements or for any portion of said damage by it sustained; nor has its deposit of three hundred and sixty-seven dollars and twenty-five cents ($367.25) for the surveying of this tract or any part thereof ever been returned to it, wherefore and by reason of the aforesaid acts of the Government, the property of your petitioner has been taken by the United States for public purposes without just compensation, contrary to the provisions of the Constitution, the law of the land, and there is now justly due and owing to your petitioner on account thereof the sum of one hundred and nineteen thousand and forty-five dollars and twenty-six cents ($119,045.26).

Wherefore your petitioner prays judgment against the United States of America for the sum of one hundred and nineteen thousand and forty-five dollars and twenty-six cents ($119,045.26).

ROYAL PACKING COMPANY,
[SEAL.] By LEON SLOSS, *Pres.*

WEBB, WEBB & LINDSLEY,
Attorneys for Claimants,
National Union Building,
No. 918 F St. N. W., Washington, D. C.

I do solemnly swear that I have read the foregoing petition by me subscribed and know the contents thereof; that the facts therein stated upon my personal knowledge are true and those stated upon information and belief I believe to be true.

LEON SLOSS.

Subscribed and sworn to before me this 3d day of April, A. D. 1897.

[SEAL.] F. D. MONCKTON,
Commissioner U. S. Circuit Court, Northern District of California, and Clerk U. S. Circuit Court of Appeals, Ninth District.

6 II.—*Traverse. Filed April* 26, 1904.

In the Court of Claims of the United States, December Term, A. D. 1903.

ROYAL PACKING CO. *vs.* THE UNITED STATES. } No. 20759.

And now comes the Attorney General, on behalf of the United States, and answering the petition of the claimant herein, denies each and every allegation therein contained; and asks judgment that the petition be dismissed.

L. A. PRADT,
Assistant Attorney General.

III.—*Argument and Submission.*

This cause was argued and submitted on the 26th day of April, 1904.

7 IV.—*Findings of Fact and Conclusion of Law. Filed May* 16, 1904.

This case having been heard by the Court of Claims, the court, upon the evidence, makes the following

Findings of Fact.

I.

The claimant herein, a corporation, was organized under the laws of the State of California October 15, 1888, for the purpose of catching and preserving salmon at the island of Afognak, Territory of Alaska, and as such corporation in the fall of 1888 and the spring of 1889 purchased and shipped to said island materials for the erection of a cannery and buildings for the purpose of canning salmon, and for that purpose and without authority or license from the United States other than whatever right it may have had under

the act of May 17, 1884 (23 Stats. L., 24), took possession of a site on said island containing one hundred and thirty-two and ninety-four hundredths (132.94) acres, and after clearing the trees therefrom, erected such cannery and buildings at a cost of forty-six thousand dollars ($46,000), prior to which time no person or corporation had been in possession of said ground.

The claimant was and had been continuously, since taking possession of said ground for the purpose aforesaid, occupying and using the same, and was in possession thereof at the date of the passage of the act of March 3, 1891 (26 Stats. L., 1100), entitled "An act to repeal the timber-culture laws and for other purposes."

II.

On November 6, 1891, the claimant made application to the United States marshal and *ex officio* surveyor general of Alaska for the survey of said tract of land under the provisions of said act of March 3, 1891, and in response to the notification of such officer,
deposited in the United States subtreasury in San Francisco
8 the estimated cost of such survey, $367.35. Thereupon said marshal and *ex officio* surveyor general caused a survey of said ground to be made, which he numbered 23, approved the same March 15, 1893 and forwarded it to the Commissioner of the General Land Office for his action.

III.

Subsequent to the passage of said act of March 3, 1891, and until December 24, 1892, the claimant continued to occupy said tract of land and to carry on its canning business and keep its plant in repair. What improvements, if any, were made on such lands subsequent to the passage of the act of March 3, 1891, does not appear. Prior to December 24, 1892, the ground so used and occupied by the claimant had not been reserved by the United States for fish culture or any other purpose, nor had the same been purchased, entered upon, or applied for by any other person or corporation than the claimant. Said land was not mineral in character.

IV.

On December 24, 1892, the President of the United States issued a proclamation declaring the whole island of Afognak, including the site so entered upon, occupied and improved by the claimant reserved for the purpose of establishing thereon United States fish culture stations, and warning all persons to depart therefrom. In July, 1893, the agent of the United States for protection of salmon fisheries informed the agents of claimant of said proclamation and ordered claimant company to depart therefrom which it did, leaving its property thereon and has not since returned thereto or used the same for the purposes of its business.

V.

On January 15, 1895, the Commissioner of the General Land Office, considering the survey so transmittted to him as stated in finding II, addressed the following latter:

9 "SIR: With your letter dated March 15, 1893, was transmitted the plat and field notes of survey No. 23, executed by Albert Lascy, deputy surveyor, of a tract of land situated on Afognak bay, Afognak island, claimed by the Royal Packing Company, and used for cannery purposes. This tract is not in square form, being five times longer along the beach than wide.

"The whole of Afognak island, its bays, rocks, and territorial waters, including Sea Lion rocks and Sea Otter island, was made a public reservation by the President's proclamation dated December 24, 1892, which contains the following proviso:

"'*Provided*, That this proclamation shall not be so construed as to deprive any *bona fide* inhabitant of said island of any valid right to the same possessed under the treaty for the cession of the Russian possessions in North America to the United States, concluded at Washington on the 30th day of March, 1867.'

"Afognak island being a public reservation and the lands embraced therein being exempted from disposal, survey No. 23 is therefore rejected, and you will notify the parties in interest of their right to appeal within sixty days.

"Very respectfully, S. W. LAMOREUX,
"*Commissioner.*"

from which decision of the Commissioner no appeal was taken by the claimant.

VI.

Since the claimant company left said island it employed a watchman to guard and attend to its improvements and machinery on said island of Afognak but notwithstanding such care and effort to preserve said property the same has deteriorated in value and is not now worth more than about one-fifth of its original cost. To what extent the property was deteriorated in value by use during the years 1889, 1890, 1891 and 1892, does not appear. Nor does it appear that any effort was made by the claimant to sell or otherwise dispose of the improvements made by it on said lands or to remove the same therefrom or that any objection to such removal was ever made by the defendants.

VII.

During the four years of claimant's occupation of said site, namely, in the years 1889, 1890, 1891 and 1892, it built up a large business in the catching and canning of salmon, which business produced a profit of fifty-five thousand dollars ($55,000) during said four years, of which amount about $— was subsequent to the

passage of the act of March 3, 1891. By reason of the claimant's removal from the site so entered upon by it pursuant to the
10 President's proclamation and order aforesaid, its business was totally destroyed. Said site so occupied was a valuable one for the purpose of salmon catching.

VIII.

The loss sustained by the claimant in having to remove from the lands so entered upon by reason of the President's proclamation and order aforesaid, was in excess of $3,000, exclusive of the sum of $367.35 so deposited by the claimant as set forth in finding LL.

IX.

The claimant has never made application for the return of the money paid by it for said survey, and has never received from the United States or from any other government or person any money or compensation whatever for the amount so deposited for said survey, for the loss of its property, or for injury to its business.

Conclusion of Law.

From the foregoing findings of fact the court decides as a conclusion of law, on the authority of The Russian American Packing Company *v.* U. S. (39 C. Cls., —):

1. That the claimant is not entitled to recover for the value of the improvements so erected by it on the land described in the findings, nor for the loss of profits arising from the claimant's removal from said land pursuant to the proclamation of the President.

2. That the claimant is entitled to recover the sum of $367.35 deposited by it as set forth in finding II.

BY THE COURT.

(See the opinion of the court set out in the record on appeal in the case of the *Russian-American Packing Company.*)

11 V.—*Judgment of the Court.*

THE ROYAL PACKING COMPANY
vs.
THE UNITED STATES. } 20759.

At a Court of Claims held in the city of Washington on the 16th day of May, 1904, judgment was ordered to be entered as follows:

The court upon due consideration of the premises find for the claimant, and do order, adjudge and decree that The Royal Packing Company, claimant, do have and recover of and from the United States the sum of three hundred and sixty-seven dollars and thirty-five cents ($367\frac{35}{100}$).

BY THE COURT.

12 VI.—*Application for and Allowance of Appeal.*

THE ROYAL PACKING COMPANY
vs.
THE UNITED STATES. } 20759.

Now comes the claimant, by its attorney of record, and makes application for and gives notice of, an appeal to the Supreme Court of the United States from the judgment of this court rendered in the above-entitled cause on the 16th day of May, 1904.

JOHN SIDNEY WEBB,
Att'y for Claimant.

BRITTON AND GRAY, *Of Counsel.*

Filed August 5, 1904.

Order.

Let the above appeal be allowed.

C. C. NOTT,
Chief Justice.

August 6, 1904.

13 Court of Claims.

THE ROYAL PACKING COMPANY
vs.
THE UNITED STATES. } 20759.

I John Randolph assistant clerk of the Court of Claims, hereby certify that the foregoing are true transcripts of the pleadings in the above-entitled cause, of the findings of fact and conclusion of law filed by the court, of the judgment of the court, of the application for and allowance of appeal to the Supreme Court of the United States.

Seal Court of Claims. In testimony whereof I have hereunto set my hand and affixed the seal of said Court of Claims this 11th day of August, 1904.

JOHN RANDOLPH,
Ass't Clerk Court of Claims.

Endorsed on cover: File No. 19,452. Court of Claims. Term No. 352. The Royal Packing Company, appellant, *vs.* The United States. Filed August 22d, 1904. File No. 19,452.

FILE COPY.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1905.

Supreme Court, U. S.
FILED
NOV 10 1905
JAMES H. MCKENNEY,
Clerk.

No. 85.

RUSSIAN-AMERICAN PACKING COMPANY

vs.

THE UNITED STATES.

No. 86.

ROYAL PACKING COMPANY

vs.

THE UNITED STATES.

APPEALS FROM THE COURT OF CLAIMS.

BRIEF IN BEHALF OF APPELLANTS.

ALDIS B. BROWNE,
ALEX. BRITTON,
Counsel for Appellants.